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APPENDIX

to the

PETITION FOR THE WRIT OF CERTIORARI

to the

SUPREME COURT OF GEORGIA IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1965, No. 1021

In the Case of J. Vernon Yost et al, Petitioners, vs. Hon. Eugene Gunby, Ordinary of Fulton County, et al, Defendants.

TO THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1965

NO._____

J. VERNON YOST ET AL

vs.

HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL

INDEX TO APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI.

Page

AFFIDAVIT of G. Seals Aiken in support of petitioners' motion for rehearing in Supreme Court of Georgia A20

AFFIDAVIT of Benjamin D. Garner in support of petitioners' motion for rehearing in Supreme Court of Georgia A28

AFFIDAVIT of Geo. H. Keeler in support of petitioners' motion for rehearing in Supreme Court of Georgia A37

CERTIFICATE of Clerk of Supreme Court of Georgia that the said court granted petitioners an extension of time in which to file their brief in said court and that it and their enumeration of errors were filed within said time A47

INDEX TO APPENDIX (Continued)

Page

CERTIFIED copy of decision of Supreme Court of Georgia in Mallard vs Mallard, and certificate attached thereto showing that said case was docketed in said court Aug. 20, 1965 and that both the brief for appellant and his enumeration of errors were filed in that court on Sept. 15, 1965 ..... A44

CERTIFIED copy of decision of Supreme Court of Georgia in Stanford vs Evans, Reed and Williams A41

CONSTITUTION OF GEORGIA

Amendment XVII A2

Article I, Section I, Paragraph I A6

Article I, Section I, Paragraph II A6

Article I, Section I, Paragraph III A6

Article I, Section I, Paragraph IV A6

Article I, Section I, Paragraph XVII A6

Article I, Section I, Paragraph XXI A6

Article I, Section I, Paragraph XXIII A7

Article I, Section I, Paragraph XXV A7

Article I, Section IV, Paragraph I A7

Article I, Section V, Paragraph I A7

Article III, Section I, Paragraph I A8

Article III, Section VII, Paragraph XVI A8

Article III, Section VII, Paragraph XVII A8

Article V, Section I, Paragraph I A8

INDEX TO APPENDIX (Continued)

Page

Article VI, Section I, Paragraph I A9

Article VII, Section I, Paragraph I A9

Article VII, Section I, Paragraph II A10

Article VII, Section I, Paragraph III A10

Article VII, Section II, Paragraph I A10

Article VII, Section VII, Paragraph I A12

Article VII, Section VII, Paragraph II A14

Article VII, Section VII, Paragraph III A14

Article VII, Section VII, Paragraph IV A15

Article XII, Section I, Paragraph I A16

Article XIII, Section I, Paragraph I A17

CONSTITUTION OF UNITED STATES

Amendment XIII, Paragraph I A19

Amendment XIV, Paragraph I A19

Article IV, Section VI A18

DECISION of Supreme Court of Georgia of Nov. 9, 1965 ..... A1

JUDGMENT of Supreme Court of Georgia of Nov. 9, 1965 ..... A1

LETTER of Clerk of Supreme Court of Georgia of Jan. 12, 1966 stating in substance that he does not know of any case in said court dismissed prior to the dismissal of the case at bar, on the ground that the appellant failed to file his enumeration of

INDEX TO APPENDIX (Continued)

Page

errors within fifteen days from the docketing of the case in that court but in which the appellant did file his enumeration of errors within the time extended by that court within which to file his brief A48

ORDER of Supreme Court of Georgia of Nov. 29, 1965 denying petitioners' motion for rehearing A42

Appendix 1

DECISION OF THE SUPREME COURT OF GEORGIA OF NOV. 9, 1965

Decided: Nov. 9, 1965

SUPREME COURT OF GEORGIA. No. 516 23182. YOST et al. v. GUNBY, Ordinary, et al.

QUILLIAN, Justice. In this case the appellants filed their enumeration of errors 19 days after the appeal was docketed in this court. Hence, the case is controlled by Stanford v. Evans, Reed and Williams, 221 Ga. ___ (—SE 2nd—), Case No. 23160, which held that an enumeration of errors filed more than 15 days after the appeal was docketed in this court was not timely. Appeal dismissed. All the Justices concur, except Mobley, J., not participating for providential cause.

JUDGMENT OF SUPREME COURT OF GEORGIA OF NOV. 9, 1965 IN ABOVE STATED CASE.

23182

SUPREME COURT OF GEORGIA

Atlanta, November 9, 1965

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al.

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the appeal be dismissed. All the Justices concur except Mobley, J., not participating for providential cause.

Appendix 2

ORDER OF THE SUPREME COURT OF GEORGIA OF NOV. 29, 1965 ON PETITIONERS' MOTION FOR REHEARING.

23182

SUPREME COURT OF GEORGIA

Atlanta, November 29, 1965.

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

The affidavits by G. Seals Aiken, Benjamin D. Garner and George H. Keeler attached to the said motion and purportedly in support thereof, constitute no proper part of the motion for a rehearing; and therefore the clerk of this court is hereby directed to detach the said affidavits from the motion and return them together with a copy of this order to counsel for movants. Mobley and Grice, J.J., not participating.

AMENDMENT XVII OF THE CONSTITUTION OF GEORGIA

"ARTICLE XVII

Public Transportation of Passengers for Hire

"Section I

Public Transportation of Passengers for Hire in the Metropolitan Area of Atlanta

"Paragraph I. The acquisition, establishment, operation or administration of a system of public transporta-

tion of passengers for hire within the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, is an essential governmental function and a public purpose for which the powers of taxation and eminent domain may be exercised and public funds of said counties and municipality expended.

"Paragraph II. The General Assembly may create a public corporation or authority as an instrumentality of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett, or any one or any combination thereof, to perform the aforesaid function, to have the power of eminent domain, the power to borrow money and issue obligations payable from its revenues, and such other powers as may be necessary or convenient for the accomplishment of the aforesaid function and purpose.

"Paragraph III. The General Assembly may provide that such public corporation or authority, as an instrumentality of the participating counties and municipality, its property, acts, activities, income and obligations and the interest thereon, shall be exempt from any tax obligations and from regulation by any agency or commission of the State.

"Paragraph IV. The General Assembly may authorize the City of Atlanta, and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett to contract with such public corporation or authority for the performance of the aforesaid function and purpose; to pay for the public transportation services and facilities contracted for, including the payment of the principal and interest on any obligations issued by such public corporation or author-

ity in order to acquire the necessary facilities and property therefor and in connection therewith to establish and maintain reasonable reserves; to levy taxes to the extent necessary to fulfill the obligation incurred in such contracts; and to convey to such public corporation or authority property or facilities, or render services, which may be useful to the establishment, operation or administration of a public transportation system within the aforesaid metropolitan area; provided that no county shall have the power to levy any tax on any subject of taxation situated within the territorial limits of any incorporated municipality which has a contract with said public corporation or authority and is itself levying a tax for that purpose.

"Paragraph V. The provisions of this Article shall be liberally construed to effectuate its purpose and shall not be limited or restricted by any existing provision of or amendment to this Constitution, or any general or special law heretofore enacted, and the authority granted by this Article to the General Assembly may be exercised by general, special or local laws without regard to uniformity.

"Section 2. When the above proposed amendment to the Constitution shall have been agreed to by two-thirds of the members elected to each of the two branches of the General Assembly, and the same has been entered on their journals with the 'Ayes' and 'Nays' taken thereon, such proposed amendment shall be published and submitted as provided in Article XIII, Section I, Paragraph I of the Constitution of Georgia of 1945, as amended.

"The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"'For ratification of amendment to the Constitution so as to declare the acquisition, establishment, operation and administration of a system of public transportation of passengers for hire in the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett to be an essential governmental function and a public purpose and to authorize the creation of a public corporation or authority for such purpose.

"'Against ratification of amendment to the Constitution so as to declare the acquisition, establishment, operation and administration of a system of public transportation of passengers for hire in the metropolitan area of the City of Atlanta and the Counties of Fulton, DeKalb, Cobb, Clayton, and Gwinnett to be an essential governmental function and a public purpose and to authorize the creation of a public corporation or authority for such purpose.'

"All persons desiring to vote in favor of adopting the proposed amendment shall vote for ratification of the amendment, and all persons desiring to vote against the adoption of the proposed amendment shall vote against ratification.

"If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this State. The returns of the election shall be made in like manner as returns for elections for members of the General Assembly, and it shall be the duty of the Secretary of State to ascertain the result and certify the result to the Governor, who shall issue his proclamation thereon."

Appendix 6

PROVISIONS OF GEORGIA CONSTITUTION CITED IN PETITION FOR CERTIORARI.

ARTICLE I

BILL OF RIGHTS

SECTION I

Ga. Code Section 2-101. "Paragraph I. Origin and foundation of government. All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and, at all times, amenable to them."

Ga. Code Section 2-102. "Paragraph II. Protection the duty of government. Protection to person and property is the paramount duty of government, and shall be impartial and complete."

Ga. Code Section 2-103. "Paragraph III. Life, liberty, and property. No person shall be deprived of life, liberty, or property, except by due process of law."

Ga. Code Section 2-104. "Paragraph IV. Right to the courts. No person shall be deprived of the right to prosecute or defend his own cause in any of the courts of this State, in person, by attorney, or both."

Ga. Code Section 2-117. "Paragraph XVII. Slavery and involuntary servitude. There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

Ga. Code Section 2-121. "Paragraph XXI. Imprisonment for debt. There shall be no imprisonment for debt."

Appendix 7

Ga. Code Section 2-123. "Paragraph XXIII. Legislative, judicial, and executive powers, separate. The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duties of one, shall, at the same time, exercise the functions of either of the others, except as herein provided."

Ga. Code Section 2-125. "Paragraph XXV. Citizens, protection of. All citizens of the United States, resident in this State, are hereby declared citizens of this State, and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges and immunities due to such citizenship."

SECTION IV

Ga. Code Section 2-401. "Paragraph I. General laws; uniform operation; how varied. — Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights, shall be varied in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract, is capable of such consent."

SECTION V

Ga. Code Section 2-501. "Paragraph I. State rights. — The people of this State have the inherent, sole and exclusive right of regulating their internal government and the police thereof, and of altering and abolishing their Constitution whenever it may be necessary to their safety and happiness."

Appendix 8

ARTICLE III

Legislative Department

SECTION I.

Legislative Power, Where Vested.

Ga. Code Section 2-1301. "Paragraph I. Power vested in general assembly. The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives."

SECTION VII.

Ga. Code Section 2-1916. "Paragraph XVI. Statutes and sections of Code, how amended or repealed. No law, or section of the Code, shall be amended or repealed by mere reference to its title, or to the number of the section of the Code, but the amending, or repealing act, shall distinctly describe the law to be amended or repealed, as well as the alteration to be made."

Ga. Code Section 2-1917. "Paragraph XVII. Corporate powers, how granted. The General Assembly shall have no power to grant corporate powers and privileges to private companies, to make or change election precincts * * *."

ARTICLE V.

Executive Department.

Section I.

Ga. Code Section 2-3001. "Paragraph I. * * The executive power shall be vested in a Governor, who shall hold his office during the term of four years, and until his successor shall be chosen and qualified. * * *"

Appendix 9

ARTICLE VI

Judiciary

SECTION I.

Ga. Code Section 2-3601. "Paragraph I. Courts enumerated. The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace, Notaries Public who are ex-officio Justices of the Peace, and such other Courts as have been or may be established by law."

ARTICLE VII

Finance, Taxation, and Public Debt.

SECTION I.

Power of Taxation; Exemptions.

Ga. Code Annotated Section 2-5501 (Pocket Parts). "Paragraph I. Taxation, a sovereign right; tax on corporations. The right of taxation is a sovereign right — inalienable, indestructible — is the life of the State, and rightfully belongs to the people in all Republican governments, and neither the General Assembly, nor any, nor all other departments of the Government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts, and all other acts, whatsoever, by said government, or any department thereof, to affect any of these purposes, shall be, and are hereby, declared to be null and void, for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant or contract, whatsoever, by the General Assembly.

"The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract, or grant to which the State shall be a party. * * *"

Ga. Code Annotated Section 2-5402 (Pocket Parts). "Paragraph II. Taxing power limited. 1. The General Assembly shall not by vote, resolution, or order grant any donation or gratuity in favor of any person, corporation or association. * * * 3. The levy of taxes on property for any one year by the General Assembly for all purposes, except to provide for repelling invasions, suppressing insurrections, or defending the State in time of war, shall not exceed one-fourth (1/4) mill on each dollar of the value of the property taxable in the State, provided, however, that until some other method permitted by the laws of the United States for the taxation of national banking associations or corporations is enacted by the General Assembly for the taxation of the shares of stock of banking corporations and other monied capital coming into competition with such banking corporations, such property may be taxed at a rate not exceeding five (5) mills on each dollar of the value thereof. * * *"

Ga. Code Annotated Section 2-5403 (Pocket Parts). "Paragraph III. Uniformity; classification of property. All taxes shall be levied and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. * * *"

SECTION II

Purposes and Method of Taxation.

Ga. Code Annotated Section 2-5501 (Pocket Parts). "Paragraph I. Taxation, how and for what purposes

exercised. — The powers of taxation over the whole State shall be exercised by the General Assembly for the following purposes only:

"1. For the support of the State Government and the public institutions.

"2. For educational purposes.

"3. To pay the principal and the interest on the public debt, and to provide a sinking fund therefor.

"4. To suppress insurrection, to repel invasion, and defend the State in time of war.

"5. To make provision for the payment of pensions to ex-Confederate soldiers and to the widows of Confederate soldiers who are unmarried.

"6. To construct and maintain State buildings and a system of State highways, airports, and docks.

"7. To make provision for the payment of old-age assistance to aged persons in need, and for the payment of assistance to the needy blind, and to dependent children and other welfare benefits; * * *

"7-A. In order to extend to the employees of the State, any department of the State, any State institution or political subdivisions of the State, and to the dependents and survivors of such employees, the basic protection accorded others by the old age and survivors insurance program embodied under the Social Security Act. * * *

"8. To advertise and promote the agricultural, industrial, historic, recreational and natural resources of the State of Georgia.

"9. For public health purposes. * * *"

Appendix 12

SECTION VII

Limitation on County and Municipal Debts.

Ga. Code Annotated Section 2-6001 (Pocket Parts): "Paragraph I. Debts of counties and cities. — The debt hereafter incurred by any county, municipal corporation or political division of this State except as in this Constitution provided for, shall never exceed seven per centum of the assessed value of all the taxable property therein, and no such county, municipality or division shall incur any new debt except for a temporary loan or loans, to supply casual deficiencies of revenue, not to exceed one-fifth of one per centum of the assessed value of the taxable property therein, without the assent of a majority of the qualified voters of the county, municipality or other political subdivision voting in an election for that purpose to be held as prescribed by law; and provided further that all laws, charter provisions and ordinances heretofore passed or enacted providing special registration of the voters of counties, municipal corporations and other political divisions of this State to pass upon the issuance of bonds by such counties, municipal corporations and other political divisions are hereby declared to be null and void; and the General Assembly shall hereafter have no power to pass or enact any law providing for such special registration, but the validity of any and all bond issues by such counties, municipal corporations or other political divisions made prior to January 1, 1945, shall not be affected hereby; provided, that any county or municipality of this State may accept and use funds granted by the Federal Government, or any agency thereof, to aid in financing the cost of architectural, engineering, economic investigations, studies, surveys, designs, plans, working drawings, specifications,

procedures, and other action preliminary to the construction of public works, and where the funds so used for the purposes specified are to be repaid within a period of ten years.

"Every county is hereby empowered to create debt, by way of borrowing from private individuals, firms, corporations, or partnerships, as well as from the State, for the purpose of paying the whole or part of the cost of property valuation and equalization programs for ad valorem tax purposes; to contract for the repayment thereof and to issue notes or other like instruments as evidence of the obligation to repay the debt so contracted without being subject to any limit as to amount of such debt so created and without the necessity of approval thereof by the qualified voters of that county; provided nevertheless that the debt shall be payable in one or more equal installments, one of which shall fall due at least each year, but which may fall due each month, the last of which shall mature not more than seven years from the date of creation and shall not bear interest in excess of five (5%) per cent per annum on unpaid principal; and a tax shall be levied on the taxable property of the county as may be needed to repay such debt so created; provided, however, that no county shall be empowered to create debt under the provisions of this paragraph for the purposes of a property valuation and equalization program until such program and all contracts to be entered into pursuant thereto shall have been approved by the State Revenue Commissioner, and until such county shall have entered into an agreement with the State Revenue Commissioner that such program shall be carried out in accordance with such rules and

regulations pertaining to such programs as may be promulgated by the Commissioner."

Ga. Code Section 2-6002. "Paragraph II. Levy of taxes to pay bonds. — Any county, municipal corporation or political division of this State which shall incur any bonded indebtedness under the provisions of this Constitution, shall at or before the time of so doing, provide for the assessment and collection of an annual tax sufficient in amount to pay the principal and interest of said debt, within thirty years from the date of the incurring of said indebtedness."

Ga. Code Section 2-6003. "Paragraph III. Additional debt authorized, when. — In addition to the debt authorized in Paragraph I of this section, to be created by any county, municipal corporation or political subdivision of this State, a debt may be incurred by any county, municipal corporation or political subdivision of this State, in excess of seven per centum of the assessed value of all the taxable property therein, upon the following conditions: Such additional debt, whether incurred at one or more times, shall not exceed in the aggregate, three per centum of the assessed value of all the taxable property in such county, municipality or political subdivision; such additional debt shall be payable in equal installments within the five years next succeeding the issuance of the evidences of such debt; there shall be levied by the governing authorities of such county, municipality or political subdivision prior to the issuance of such additional debt, a tax upon all of the taxable property within such county, municipality or political subdivision collectible annually, sufficient to pay in full the principal and interest of such additional debt when as due; such tax shall be in addition to and separate from

all other taxes levied by such taxing authorities, and the collections from such tax shall be kept separate and shall be held, used and applied solely for the payment of the principal and interest of such additional indebtedness; authority to create such additional indebtedness shall first have been authorized by the General Assembly; the creation of such additional indebtedness shall have been first authorized by a vote of the registered voters of such county, municipality or political subdivision at an election held for such purpose, pursuant to and in accordance with the provisions of this Constitution and of the then existing laws for the creation of a debt by counties, municipal corporations, and political subdivisions of this State, all of which provisions, including those for calling, advertising, holding and determining the result of, such election and the votes necessary to authorize the creation of an indebtedness, are hereby made applicable to an election held for the purpose of authorizing such additional indebtedness."

Appendix 16

Ga. Code Annotated Section 2-6004 (Pocket Parts). "Paragraph IV. Temporary loans authorized; conditions. In addition to the obligations hereinbefore allowed, each county, municipality, political subdivision of the State authorized to levy taxes, and county board of education, is given the authority to make temporary loans between January 1st and December 31st in each year to pay expenses for such year, upon the following conditions: The aggregate amount of all such loans of such county, municipality, political subdivision or county board of education outstanding at any one time shall not exceed 75 per cent of the total gross income of such

county, municipality, political subdivision or county board of education, from taxes collected by such county, municipality, political subdivision or county board of education in the last preceding year. Such loans shall be payable on or before December 31st of the calendar year in which such loan is made. No loan may be made in any year under the provisions of this paragraph when there is a loan then unpaid which was made in a prior year under the provisions of this paragraph. Each such loan shall be first authorized by resolution fixing the terms of such loan adopted by a majority vote of the governing body of such county, city, political subdivision or county board of education, at a meeting legally held, and such resolution shall appear upon the minutes of such meeting. No such county, municipality, subdivision or county board of education shall incur in any one calendar year, an aggregate of such temporary loans and other contracts or obligations for current expenses, in excess of the total anticipated revenue of such county, municipality, subdivision, or county board of education for such calendar year, or issue in one calendar year notes, warrants or other evidences of such indebtedness in a total amount in excess of such anticipated revenue for such year."

ARTICLE XII

Laws of General Operation of Force in State.

Section I.

Ga. Code Section 2-8001. "Paragraph I. Supreme law. The laws of general operation in this State are, first: As the Supreme Law: The Constitution of the United States, the laws of the United States in pursuance thereof * * * ."

Appendix 17

ARTICLE XIII

Amendments to the Constitution.

SECTION I.

Constitution Amended, How.

Ga. Code Annotated Section 2-8101 (Pocket Parts). "Paragraph I. Proposal by General Assembly; submission to people. An amendment to this Constitution may be proposed by a resolution in the Senate or the House of Representatives, and if the same shall be agreed to by two-thirds of the members elected to each branch of the General Assembly, such proposed amendment shall be entered on the journals of each branch with the Ayes and Nays taken thereon. Any proposed amendment may be repealed or amended by the same General Assembly, if done so at least two months prior to the date of the election at which such proposed amendment is to be submitted.

"The Governor, the Attorney General, and the Secretary of State shall meet and determine whether a proposed amendment is general, and if not general, shall determine what political subdivision or subdivisions are directly affected by such proposed amendment. If a proposed amendment is general, the Governor shall cause such proposed amendment to be published in full once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is submitted, in one newspaper of general circulation in each Congressional District of the State. If such proposed amendment is not general, the Governor shall cause such proposed amendment to be published in full in one newspaper of general circulation in each county in which the directly affected political

subdivision or subdivisions are located. In the event no such newspaper is located in such county, a newspaper in an adjoining county shall be used.

"Any proposed amendment which is general shall be submitted to the people of the entire State at the next general election at which members of the General Assembly are elected, and if ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment shall become a part of this Constitution. A proposed amendment which is not general shall only be submitted to the people of the political subdivision or subdivisions directly affected. The votes of the electors in each political subdivision affected shall be counted separately in determining whether such proposed amendment is ratified, and it must be ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon in each such political subdivision before it shall become a part of this Constitution. The General Assembly, in the resolution, shall state the language to be used in submitting the proposed amendment.

"When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately."

THE U. S. CONSTITUTION

ARTICLE IV

SECTION IV

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the Legislature, or of the executive (when the

Legislature cannot be convened), against domestic violence."

AMENDMENT XIII

"Paragraph I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

AMENDMENT XIV

"Paragraph I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

AFFIDAVITS ATTACHED TO, MADE A PART OF, AND FILED WITH PETITIONERS' MOTION FOR REHEARING WHICH THE SUPREME COURT OF GEORGIA DIRECTED AND CAUSED ITS CLERK TO DETACH AND RETURN TO PETITIONERS' COUNSEL:

Appendix 20

J. VERNON YOST ET AL,
Appellants
vs.
HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL,
Appellees

NO. 23182
IN SUPREME COURT
OF GEORGIA

AFFIDAVIT OF G. SEALS AIKEN AS ATTORNEY FOR APPELLANTS IN SUPPORT OF THEIR MOTION FOR REHEARING

GEORGIA, FULTON COUNTY:

Personally appeared before the undersigned attesting officer, G. Seals Aiken, who, after being duly sworn, deposes and says:

I am attorney at law for the appellants in this case. I argued this case in the trial court and also prepared the notice of appeal and the brief for appellants. On Sept. 28, 1965, within fifteen days from the date of docketing the case in this court, I applied to Mr. Chief Justice W. H. Duckworth of the Supreme Court of Georgia, for an extension of ten days time in addition to the fifteen days fixed by Rule 20 of this Court in which to file a brief. This application was granted by the Chief Justice with the request that I advise counsel for appellees that he had likewise granted them an extension of ten days time in which to file briefs for the appellees, which was done by me on Sept. 29, 1965.

I filed a brief and argument for appellants and also separately at the same time an enumeration of the er-

rors relied upon and simultaneously filed a copy of said enumeration of errors with the Clerk of the trial court. The brief and enumeration of errors were served upon counsel of record for the appellees prior to the filing of the same.

I was sent a trial calendar under date of Oct. 18, 1965 by the Clerk of the Supreme Court of Georgia showing this case was the fourth case set for argument beginning at 10:00 A.M. on Nov. 9, 1965. The case was called in its regular order about 10:55 A.M. for argument, and I appeared promptly before the court to argue the case in behalf of appellants. When I started to argue the case, Mr. Justice Quillian asked me when I filed an enumeration of errors relied upon. I stated I did not recall the exact date I filed it but that I knew I filed it at the same time I filed the brief and within the extension of time granted to me by the Chief Justice in which to file my brief. The Chief Justice then stated that the statute (referring to the Appellate Practice Act of 1965 as amended) required the enumeration of errors to be filed within fifteen days from the date of docketing the case; that it was mandatory; that this court was bound by it and could not extend the time for filing an enumeration of errors; that appellants' case would, therefore, have to be dismissed; and that it would be futile for me to argue the case and a waste of the time of the court as well as my time to do so. I then stated to the court that this point had not been raised by the appellees; that I had had no intimation that any such point would be raised; that I respectfully disagreed with the court in its statement that the statute required the enumeration of errors to be filed within a period of fifteen days from the docketing of the case and insisted that it only required

the enumeration of errors to be filed AT THE TIME THE BRIEF WAS FILED; that I did this exactly as required by said statute and the rules of this court; that, upon my request within fifteen days from the docketing of the case, Mr. Chief Justice Duckworth had very graciously granted me an extension of ten days additional time in which to file a brief for the appellants and the same extension of time for the appellees in which to file a brief; that I had filed said brief and the enumeration of errors at the time I filed my brief within said extension of ten days granted by the Chief Justice; that no statement was made to me by the Chief Justice at the time he granted the said extension of ten days in which to file a brief to the effect that the enumeration of errors would have to be filed within fifteen days from the docketing of the case; that nothing whatever was said about the enumeration of errors; that inasmuch as Section 14 of the statute (Ga. Laws 1965 page 243-4) expressly required that the enumeration of errors be filed "at the time the brief is filed in the Supreme Court," the extension of time for filing the brief automatically and necessarily included the same extension of time in which to file the enumeration of errors and that I had acted accordingly; that I could not have filed an enumeration of errors at the same time I filed the brief if I had filed the former within fifteen days from the docketing of the case because I filed the brief after said fifteen days but within the ten days extension granted by the Chief Justice. I thereupon urged the court to grant me a reasonable time in which to file a brief on said point raised for the first time by the court, and after a colloquy between the Chief Justice and counsel for the parties, between the Chief Justice and Associate Justices,

and between the Associate Justices and counsel for the parties, consuming approximately twenty three minutes, the Chief Justice stated I was granted ten days in which to file a brief on said point and that I would be permitted to argue the case on its merits subject to the filing of said brief, despite his prior statement that it would be futile for me to do so and a waste of the time of the court as well as my own time.

During the colloquy between the court and counsel as to whether or not I would be permitted to argue the case for the appellants, Mr. Huie stated in substance that counsel for the appellees had considered the point raised by the court as to whether the enumeration of errors had to be filed within fifteen days from the docketing of the case. In this connection, this court's attention is invited to Rule 35 of this court, providing, "Notice of a motion to dismiss and of the grounds thereof should be given in writing to counsel for the appellant five days before the case is called for argument, service thereof to be made and shown as required in the service of briefs." It would appear, therefore, that counsel for appellees realized it would be illegal to dismiss appellants' appeal on said ground.

I thereupon started to argue the case and inquired of the court as to the time I had in which to argue and was informed that the time which had been consumed in the colloquy as aforesaid as to whether I would be permitted to argue the case at all, consisting of approximately twenty three minutes, was charged against me and that I only had the remainder of thirty minutes in which to argue the case.

Within about two minutes from the time I started arguing the case, I referred to the fact that the capital

cost of construction of the proposed project would amount to more than a billion dollars according to the evidence furnished me, and I was interrupted by Mr. Justice Quillian with a statement to the effect that it didn't make any difference whether the cost was ten or fifteen cents or a billion dollars, that the court was only interested in the law and constitutionality of the matters under consideration and that the law and the constitution would have the same effect regardless of the amount. At this point, I asked the court to grant permission to Mr. Benjamin D. Garner, as a party appellant, to consume the remainder of the time allowed for argument in his own behalf by reason of his study and knowledge of inter-dependence of the various engineering reports and the laws pertaining thereto. The Chief Justice then asked me if Mr. Garner was a lawyer and I told him that he was not admitted to the Bar of this State. He thereupon stated that he would not permit Mr. Garner to make any argument. I then invited the court's attention to the fact that Article I, Section I, Paragraph 4 of the Constitution of Georgia expressly provided that no person shall be deprived of the right to prosecute or defend his own cause in any of the courts of this state, in person, by attorney, or both. The Chief Justice nevertheless adhered to his ruling in denying Mr. Garner his said constitutional right as a party appellant to argue said case in person. The Chief Justice stated if Mr. Garner were not represented by counsel that he would permit him to argue the case as a party. I then repeated the substance of the said constitutional provision. The Chief Justice, however, adhered to his ruling denying Mr. Garner his said right to argue his case under said provision of the Georgia Constitution.

I then stated I would reserve the remainder of my time for rebuttal of any argument which might be made by counsel for appellees.

Mr. Stell Huie thereupon arose and proceeded to make an argument for appellees, and stated in substance that his clients had hoped to have the constitutional questions raised by appellants decided by this court. The Chief Justice then informed Mr. Huie that he had his case won because the court was going to dismiss the appeal on the ground that the appellants had not filed an enumeration of errors within the time provided by the statute, but that if he talked too much he might change the mind of the court and they might decide against him. Mr. Huie then sat down.

When Mr. Huie sat down, I arose and stated that I had assigned error in this case upon grave State and Federal Constitutional questions of great public concern and appealed to the court to maturely consider said errors upon full argument as required under its decision in the case of *Central of Ga. Rwy. Co. vs. Yesbik,* 146 Ga. 620, 91 S.E. 873, because appellants desired and intended, in the event this court should decide adversely to them, to appeal to the Supreme Court of the United States. I was cut off at that point by a statement from the Chief Justice to the effect that "the case is dismissed." I then invited the attention of the court to the fact that I had been granted first ten days in which to file a brief on the point raised by the court, which was later reduced to five days, and urged the court to allow me to file said brief instead of dismissing the case from the bench without hearing oral or written argument on said point, but the Chief Justice, with the consent of the other Justices sitting with him, announced that the case

was dismissed and the permission previously granted to file a brief first within ten days and later within five days was revoked and I was not permitted to make any argument in behalf of appellants.

In the case of *Mallard vs. Mallard,* No. 23151, this court on Oct. 19, 1965, took jurisdiction and reversed the trial court without even mentioning the fact that the case was docketed on Aug. 20, 1965 and the enumeration of errors was not filed until Sept. 15, 1965, or twenty six days after the date of docketing the case, and no extension of time for filing the brief was requested or obtained.

In the case of *Stanford vs. Evans, Reed and Williams,* 221 Ga. ____ (____SE 2nd ____), Case No. 23160, no extension of time was sought or granted for the filing of the brief or enumeration of errors in that case, and the latter was not filed until seventeen days after the case was docketed in this court.

No extension of time was sought or granted for the filing of a brief or enumeration of errors in any of the cases in which this court held that the enumeration of errors was not filed in time if not filed within fifteen days from the date of the docketing of the case, except in the case at bar, where the enumeration of errors was filed simultaneously with the brief as required by law within the extension of time allowed by this court in which to file said brief.

This affidavit is made as a part of the record in this case in this court for the consideration of the court in passing upon Appellants' motion for rehearing and for the consideration of the U. S. Supreme Court on appeal or certiorari in the event this Court should fail to

reverse its dismissal of this case or upon reversal of said dismissal, should decide adversely to appellants on the grounds of error urged by them in their appeal to this court, and for such other and further purposes as may be proper under the law and the record in this case.

s/s G. SEALS AIKEN

(G. SEALS AIKEN)

Sworn to and subscribed before me on this the 17th day of November, 1965.

SEAL

s/s E. H. STANFORD

NOTARY PUBLIC, FULTON COUNTY, GEORGIA

Notary Public, Georgia, State at Large. My Commission Expires Sept. 11, 1966.

APPELLANTS' EXHIBIT A

Appendix 28

J. VERNON YOST ET AL,
Appellants
vs.
HON. EUGENE GUNBY, ORDINARY OF FULTON COUNTY, ET AL,
Appellees

NO. 23182
IN SUPREME COURT
OF GEORGIA

AFFIDAVIT OF BENJAMIN D. GARNER, PARTY APPELLANT, IN SUPPORT OF APPELLANTS' MOTION FOR REHEARING

GEORGIA, FULTON COUNTY:

Personally appeared before the undersigned attesting officer Benjamin D. Garner, who, after being duly sworn, deposes and says: I was a party plaintiff in Fulton Superior Court and I am a party appellant in this court in the above stated case.

On Tuesday, November 9, 1965, at or slightly before 11:00 o'clock A.M., the above styled case was called for argument by the Supreme Court of Georgia. G. Seals Aiken appeared as attorney at law for Appellants, and I appeared for myself and in my own behalf. Mr. Aiken and I had agreed prior to the call of the case that he would open the argument for Appellants and would consume approximately fifteen minutes and reserve the last fifteen minutes of the allotted half hour to me for rebuttal of such argument as the attorneys for the appellees might make.

Upon rising to present his argument of the case on its merits, Mr. Aiken was immediately questioned by Mr.

Justice Quillian as to the date upon which he had filed the enumeration of errors for the appellants. Mr. Aiken said he didn't remember the exact date but that he had done so in the manner provided by law and concurrently with the filing of his brief for appellants and within the extension of time allowed for filing said brief by Mr. Chief Justice Duckworth. Mr. Chief Justice Duckworth thereupon stated to counsel for appellants that it would be futile for him to argue the case because the court would have to dismiss the case because the statute required the enumeration of errors to be filed within fifteen days from the date the case was docketed; that this was not done in this case; that neither he nor the court had any discretion to extend said time of fifteen days fixed by the statute for the filing of the enumeration of errors; and that his granting an extension of ten days in which to file a brief did not carry with it any extension of time in which to file the enumeration of errors. Chief Justice Duckworth stated in effect that although the result of such a decision may have ridiculous results, it was nevertheless binding under the statute for the court to make it; he thus implied that it was not an unwarranted intrusion by the legislature upon the inherent right of the court to conduct its own business; that the court had invariably held that either the Supreme Court of Georgia or the Chief Justice thereof had sufficient authority to grant extension of time for the filing of briefs but no authority and no latitude whatever under the Appellate Practice Act of 1965 as amended to grant any extension of time for the filing of an enumeration of errors relied upon. He said the statute does permit, in fact requires, this court to dismiss the case where the enumeration of

errors is not filed within fifteen days from the date the case is docketed.

Mr. Aiken stated that no such point had been made by counsel for the appellees and that he did not know that any such point would be raised by the Supreme Court and requested permission to file a brief on said point and to argue the case on its merits subject to the filing of said brief. The Chief Justice thereupon granted Mr. Aiken five days in which to file said brief. Mr. Aiken then asked for more time in view of the importance of the question raised, and upon the suggestion of Mr. Justice Quillian, the Chief Justice granted Mr. Aiken ten days in which to file said brief.

The granting of ten days in which to file a brief (on the point raised by the court as to whether appellants' enumeration of errors had been filed within the time required by law) was done despite the fact that the Chief Justice had stated previously that it would be futile for Mr. Aiken to argue the case and a waste of the court's time as well as his time because he said the statute required the enumeration of errors to be filed within fifteen days from the date of the docketing of the case and that by reason of the failure to do so for any cause, the court nevertheless was required to dismiss the case under the statute which it was bound by.

No question was raised by counsel for appellees as to the time of filing the enumeration of errors for appellants.

At the expiration of the colloquy referred to above, consisting of twenty-three minutes, Mr. Aiken inquired of the court as to how much time he had and he was informed by the court that the time consumed in the

colloquy as to whether or not he would be permitted to argue the case was charged to him as counsel for the appellants and that he, therefore, had only the remainder of thirty minutes left. At this point Mr. Aiken attempted to argue the merits of the case and within the course of about two minutes he mentioned the fact that the capital cost of construction of the projected rapid transit system would be in excess of one billion dollars. He was thereupon interrupted by Mr. Justice Quillian with a statement that the cost of the project did not interest the court, whether it be fifteen cents or one billion dollars, and that the court was only interested in the constitutionality of the various aspects of the case then under consideration. Affiant respectfully states that the capital cost of the construction of this project is such that it cannot be accomplished within the constitutional limitations imposed as to indebtedness and that no intelligent decision can be reached concerning the constitutionality of some of the aspects of the case without a consideration of its cost.

In view of Article I, Section I, Paragraph 2 of the Constitution of the State of Georgia, affiant affirmatively states that any attempt to render a decision as to the constitutionality of the aspects of this case without considering the cost aforesaid is a violation in one stroke of the 14th Amendment of the U. S. Constitution as it relates to due process of law and to equal protection of the law, and to Article I, Section I, Paragraph 2 of the Constitution of Georgia and to Article I, Section I, Paragraph 3 of the State Constitution which also provides that no person shall be deprived of life, liberty or property except by due process of law, Article I, Section 4, Paragraph 2 of the Georgia Constitution which provides

that legislative acts in violation of this constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them.

At this point Mr. Aiken attempted to present me as a party appellant to argue the case on my own behalf in view of my study and experience pertaining to the Metropolitan Atlanta Rapid Transit Authority Act, the Parsons, Brinckerhoff, Quade and Douglas Engineering Report, the plan of implementation submitted concurrently with said report, the Urban Mass Rapid Transit Authority Act known as Public Law 88-365 of the 88th Congress, and the Inter-dependence of one upon the other. The Chief Justice then asked Mr. Aiken if I were a lawyer and he told him I was not admitted to the Bar of this State but that I was a party appellant and that under the express provisions of Article I, Section 1, Paragraph 4 of the Constitution of Georgia, I had a right to prosecute or defend my own cause in any of the courts of this state, in person, by attorney, or both. The Chief Justice nevertheless refused to allow me to make any argument whatsoever in my own behalf. The Chief Justice stated he would permit me to argue the case if I were not represented by counsel but he would not do so inasmuch as Mr. Aiken was representing all of the appellants. Mr. Aiken then sat down and said that he had better save the remainder of his time for rebuttal of such argument as might be made by counsel for appellees.

Mr. Stell Huie then got up and started to make an argument, at the outset of which he remarked that his clients and the other parties at interest had hoped for a decision on the constitutional questions raised. At this point Mr. Chief Justice Duckworth informed him that he had his case won because the court intended to dis-

miss the appeal on the ground that the enumeration of errors had not been filed in time, but that if he talked too much he might change the mind of the court and force it to decide against him. At some point in a colloquy between the Chief Justice and Mr. Huie, the former told the latter that he should tell his partner to be more careful in drafting legislation, referring to Mr. Jack Etheridge, who was present in court as one of counsel for appellees and who actively supported the Metropolitan Atlanta Rapid Transit Authority Act as a member of the State Legislature of Georgia.

During the colloquy between the court and counsel as to whether or not Mr. Aiken would be permitted to argue the case for the appellants, Mr. Huie stated in substance that counsel for the appellees had considered the point raised by the court as to whether the enumeration of errors had to be filed within fifteen days from the docketing of the case. In this connection, this court's attention is invited to its Rule 35 providing, "Notice of a motion to dismiss and of the grounds thereof should be given in writing to counsel for the appellant five days before the case is called for argument, service thereof to be made and shown as required in the service of briefs . . ." It would appear, therefore, that counsel for appellees realized it would be illegal to dismiss appellants' appeal on said grounds.

(Mr. Aiken had indicated to me prior to the call of the case for argument that he expected to file a motion for rehearing if the court should decide against the appellants in order to avoid the necessity of carrying the case to the U. S. Supreme Court as the appellants, including this affiant, had indicated to him their desire and intention so to do should the case be decided ad-

versely to them.) Mr. Aiken then got up and urged the court to hear full argument in view of the grave State and Federal constitutional questions raised of great public concern and to maturely consider the case upon full argument as required by the decision of this court in the case of *Central of Ga. Rwy. Co. vs. Yesbik,* 146 Ga. 620, 91 S.E. 873, and the decisions of the U. S. Supreme Court therein cited, as the appellants desired and intended to appeal to the U. S. Supreme Court if this court decided adversely to them. At the mention by Mr. Aiken of the U. S. Supreme Court, the Chief Justice interrupted Mr. Aiken and stated in substance, if you are going to take the case there, we'll decide the case against you now and dismiss it, and turning to the other Justices sitting on the bench with him, he got or assumed their assent to do so and announced from the bench that the case was dismissed, thereby preventing Mr. Aiken from arguing the case. Mr. Aiken thereupon stated to the court that he simply mentioned the desire and intention of the appellants to carry the case to the U. S. Supreme Court in the event of an adverse decision to emphasize the importance of the grave Federal and State constitutional questions presented of great public concern. Mr. Aiken also reminded the court of the fact that it had previously granted him time in which to file a brief on the point as to whether or not the enumeration of errors had been filed in time and urged the court to allow him to file said brief, but the Chief Justice stated that he had withdrawn the permission previously granted him to file a brief or to make any argument and announced again that the case was dismissed.

By reason of the court's failure to resolve the constitutional questions raised, such bonds and/or equipment

trust certificates as may be sold by the Rapid Transit Authority and such general obligation bonds as may be issued by any of the potentially contracting governments to finance their participation will, in all probability, and as is usually the case, be sold at the limit of the legal rate of interest provided by law, which in this case is six per cent. per annum, instead of an interest rate of slightly more than three per cent., which the City of Atlanta now enjoys. As pointed out on page 100 of the Parsons, Brinckerhoff, Quade and Douglas Engineering Report, "Approximately one hundred million dollars could be saved either by reduction of the interest rate from 4.5 per cent. to 3.0 per cent. or by shortening the maturities by one third." It follows that if one hundred million dollars could be saved by reducing the interest rate from 4.5 per cent. to 3.0 per cent., then two hundred million dollars could be saved by reducing it from six per cent. to three per cent.

The City of San Francisco at the present time is offering their bonds for a similar rapid transit system project at six per cent. per annum.

This affidavit is made as a part of the record in this case in this court for the consideration of the court in passing upon Appellants' motion for rehearing and for the consideration of the U. S. Supreme Court on appeal or certiorari in the event this court should fail to reverse its dismissal of this case or upon reversal of said dismissal, should decide adversely to appellants on the grounds of error urged by them in their appeal to this

court, and for such other and further purposes as may be proper under the law and the record in this case.

s/s BENJAMIN D. GARNER

(BENJAMIN D. GARNER)

Sworn to and subscribed before me
on this the 16th day of November, 1965.

s/s G. SEALS AIKEN

Notary Public, Fulton County, Georgia.

APPELLANTS' EXHIBIT B

GEORGIA, COBB COUNTY

I, George H. Keeler, having appeared before the undersigned officer duly authorized to administer oaths and having been duly sworn, do solemnly swear that the statements herein are true and correct.

I am 60 years old; I am a native of Marietta, Georgia, and have been a resident and taxpayer of Marietta and Cobb County for the past 13 years. I am not a party to the so-called Rapid Transit suit involving Yost et al as plaintiffs and Gunby et al as defendants. However, as a property owner and a taxpayer, I am concerned with its outcome.

The suit raises serious questions as to the constitutionality of the Metropolitan Atlanta Rapid Transit Authority Act of 1965 as well as to the validity of certain referenda in which some of the various political subdivisions in the Atlanta area were called upon to decide whether or not they wished to participate in the scheme. I know this to be true because I have read the suit.

Judge Moore of the Fulton Superior Court decided the case in favor of the defendants, and I attended the hearing.

The plaintiffs appealed the decision to the Georgia Supreme Court and hearing on the arguments was scheduled for November 9, 1965. Because of my interest in the suit, I was in the Courtroom in the section reserved for spectators, when the case was called.

The following is a description of what took place in the Courtroom – in my view as a layman and from what I was able to see and hear.

Mr. G. Seals Aiken, appellants' attorney, placed his

papers on the lectern before the Bench and started to speak. He was immediately interrupted by Mr. Justice Quillian's asking questions about when a certain document had been filed with the Court. I believe the document referred to is designated as the Enumeration of Errors.

Mr. Aiken said something to the effect that he had requested and received from Mr. Chief Justice Duckworth an extension of time in which to file some other document (which I understood to be appellants' brief).

Mr. Justice Duckworth entered into the discussion and said something to the effect that the time for filing the document known as the Enumeration of Errors was fixed by statute, and that settled it; he had no alternative but to dismiss the case forthwith, he said.

Mr. Aiken then asked for a period of time in which to file a brief on that point. Mr. Justice Duckworth specified five days and, on Justice Quillian's suggestion, increased it to ten days.

Mr. Justice Duckworth excused himself from the Bench for a few minutes, and during this interval, several of the other Justices joined Mr. Justice Quillian in questioning Mr. Aiken regarding the filing of the Enumeration of Errors.

Mr. Aiken attempted several times to begin his arguments on the merits of the issue; and each time one or another of the Justices would pose a question or make a statement about the filing of the Enumeration of Errors.

The Clerk of the Court was asked about appellants' remaining time. From the reply it appeared that there were only seven minutes left.

Mr. Aiken again attempted to argue the case on its merits. He said there was a question of a billion dollars of the taxpayers' money at stake. Mr. Justice Quillian interjected a statement to the effect that the Court was not concerned with the amount of money involved. The Court, he said, was concerned only with questions of law.

Mr. W. Stell Huie, counsel for the Rapid Transit Interim Study Commission, stated that while he could not speak for the other parties appellee, his client was not moving for dismissal of the case. He stated that serious constitutional questions had been raised and he felt the issues should be resolved.

Mr. Justice Duckworth suggested to Mr. Huie that he stop arguing against his case, and sit down.

Mr. Aiken then attempted to introduce Mr. Ben Garner, one of the appellants in the action.

As Mr. Garner started to rise from his seat, Mr. Justice Duckworth asked, "Who is this man; is he a member of the Bar?"

Mr. Aiken explained that Mr. Garner was not a lawyer, but was one of the appellants in the matter before the Court, and, as such (by virtue of a provision in the Georgia Constitution) was legally qualified to argue his own case.

Mr. Justice Duckworth said that inasmuch as Mr. Garner was represented by counsel he would not permit him to speak.

Mr. Aiken then attempted to cite the provision in the Georgia Constitution which says that a person may be represented by counsel, or may prosecute or defend his own case, or both.

Mr. Justice Duckworth said, "He is not going to speak in this Court."

Mr. Aiken said something about the possibility of his client's appeal to the United States Supreme Court.

Mr. Justice Duckworth said if Mr. Aiken was going to take the case "there", he would enter an order of dismissal from the Bench.

This affidavit is made and submitted to appellants' attorney for use in a motion for reconsideration by the Supreme Court of Georgia of its judgment of dismissal of the case of Yost et al vs. Gunby et al.

Sgd. GEORGE H. KEELER

GEORGE H. KEELER

Sworn to and subscribed before me,
this 17th day of November, 1965.

Sgd. MARGARET G. BRYAN

Notary Public, Cobb County, Georgia.

My Commission Expires Aug. 18, 1967.

APPELLANTS' EXHIBIT C

DECISIONS OF SUPREME COURT OF GEORGIA IN OTHER CASES AND CERTIFICATE AND LETTER OF CLERK OF SAID COURT RELEVANT TO THE CASE AT BAR.

Decided: Oct. 19, 1965

SUPREME COURT OF GEORGIA No. 510

23160. STANFORD v. EVANS, REED & WILLIAMS

QUILLIAN, Justice. In the instant case the appellant filed his notice of appeal on August 14, 1965, 31 days after the trial judge's order overruling his motion for new trial, which order was rendered on July 14, 1965. The Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 21; *Code Ann.* § 6-803) provides: "A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of . . . , but when a motion for new trial, or a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the order granting, overruling, or otherwise finally disposing of the motion." While there is a proviso that the trial judge may extend the time for filing the notice of appeal (Ga. L. 1965, pp. 18, 21; *Code Ann.* § 6-804), the entire record was sent to this court and no order extending the time is contained therein. The failure to file a notice of appeal within the time required is a ground for dismissal under Ga. L. 1965, pp. 18, 29, as amended, Ga. L. 1965, pp. 240, 241 (*Code Ann.* § 6-809).

Appeal dismissed. All the Justices concur, except Mobley, J., not participating for providential cause.

SUBMITTED OCTOBER 11, 1965 — DECIDED OCTOBER 19,

1965 — JUDGMENT ADHERED TO ON REHEARING NOVEMBER 4, 1965.

Appellate procedure. Screven Superior Court. Before Judge Usher.

LIMERICK L. ODOM, for appellant.

W. COLBERT HAWKINS, for appellee.

ON REHEARING.

For the reasons therein stated we adhere to our original judgment. However, for another insurmountable reason this case must be dismissed. Upon further examination of the record, we find that the enumeration of errors was filed 17 days after the case was docketed in this court. Under the view we take of Sections 13 and 14 of the Appellate Procedure Act of 1965 (Ga. L. 1965, pp. 18, 29, as amended Ga. L. 1965, pp. 240, 243; *Code Ann.* § § 6-809 and 6-810) they require the enumeration of errors to be filed within the time prescribed by this court for the appellant to file his brief. Rule 20 of the Rules of the Supreme Court of the State of Georgia specifies that the appellants' brief must be filed with the clerk within 15 days after the docketing of the case in this court. Hence, the enumeration of errors in this case was not timely and, for this further reason, the appeal is dismissed.

Rehearing denied. All the Justices concur, except Mobley, J., not participating for providential cause.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

(SEAL) s/s HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT D

Appendix 44

Decided Oct. 19, 1965

SUPREME COURT OF GEORGIA

23151. MALLARD v. MALLARD.

CANDLER, Presiding Justice. On April 20, 1962, a decree was entered in the Superior Court of Newton County which required Leo Sessions Mallard to pay his wife, Polly Davis Mallard, from whom he was by the same decree divorced, the sum of $45 per week for the support and maintenance of their minor child. Pursuant to the provisions of an Act approved March 9, 1955 (Ga. L. 1955, p. 630, *Code Ann.* § 30-220) which authorizes the revision upward or downward of a decree for child support, Mallard filed a suit in the same court against his former wife in which he prayed for a downward revision of the decree, basing his prayer for such relief on the ground that there had been a substantial change in his income and financial status since the rendition of such decree. A general demurrer to his petition was overruled and there is no exception to that judgment. His divorced wife also answered his petition and denied that there had been a substantial change in his income and financial condition since the child support decree was granted. The plaintiff was the only witness who testified on the trial, and while he was testifying, the trial judge, on his own motion, halted further examination of the witness and stated that he would direct a verdict in favor of the defendant since he did not think the evidence given by the witness would authorize a modification of the decree. Counsel for the plaintiff thereupon stated to the court that there was other evidence which he wished to introduce respecting a change in plaintiff's financial condition. To this the court replied: "I'll let you put in anything you

think is necessary for the record if you want to carry it up, what you proposed to prove, so that you'll have that perfected, but I don't think there's been enough evidence here to warrant a modification or even letting it go to the jury, but if you want to put anything in the record, I'll be glad to do it, and if I am wrong, then I can be corrected." Counsel for the plaintiff then asked the court, "Is this stopping me from entering any further evidence as to this man's financial condition? Is that the order of the court?" The court indicated that such was its ruling. Counsel for the plaintiff then stated to the court that he did not care to introduce further evidence unless it was admitted for the jury's consideration. After this occurrence, the plaintiff as a witness in his own behalf gave no further testimony, no other evidence was introduced by either party, and a verdict for the defendant was directed. The plaintiff moved for a new trial and alleged that the court erred in refusing to permit him to introduce all of his evidence respecting a change in his financial status and in directing a verdict for the defendant. The motion for new trial was overruled and the plaintiff excepted to that judgment. *Held*: "Where there is no conflict in the evidence, and that introduced, with all reasonable deductions or inferences therefrom, shall demand a particular verdict, the court may direct the jury to find for the party entitled thereto. In the event that the defendant shall fail to put in any evidence in the trial of any case, he shall nevertheless be entitled to move for a directed verdict when the parties have closed their respective cases." *Code Ann.* § 110-104. But it is an elementary principle of law that a trial judge is never authorized to direct a verdict against a party litigant until he has introduced or had an opportunity to

introduce all of his evidence on the issues involved and rested his case. See, in this connection, *Walker v. Supple,* 54 Ga. 178 (2); *McWilliams v. City of Rome,* 138 Ga. 581 (75 SE 645). In the instant case the record clearly shows that the plaintiff was not permitted to offer all of his evidence respecting an alleged change in his financial status for the jury's consideration; and since this is true, the ends of justice require this court to order a new trial. *Judgment reversed. All the Justices concur, except Mobley, J., not participating for providential cause.*

SUBMITTED OCTOBER 11, 1965 — DECIDED OCTOBER 19, 1965.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in Case No. 23151, Leo Sessions Mallard v. Polly Davis Mallard, as appears from the original of file in this office.

I do further certify that the said case was docketed in this court on August 20, 1965, and that both the brief for the appellant and his enumeration of errors were filed in this court on September 15, 1965, as appears from the records and files of this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

(SEAL) s/s HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT E

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

January 20, 1966

I hereby certify that Georgia Supreme Court Case No. 23182, J. Vernon Yost et al. v. Eugene Gunby, Ordinary, et al., was docketed in the said court on September 16, 1965, that on September 28, 1965, Chief Justice Duckworth granted to counsel for appellants an extension of time until October 10, 1965, within which to file his brief for the appellants and that the said brief and the enumeration of errors were both filed in this court on October 5, 1966 — all as appears from entries on page 37 of Volume 24 of the General Docket of this court.

Witness my signature and the seal of the said court hereto affixed the day and year first above written.

(SEAL) HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT F

Appendix 48

STATE OF GEORGIA
SUPREME COURT
ATLANTA

January 12, 1966

Mr. G. Seals Aiken
1409 Candler Building
Atlanta, Georgia 30303

Dear Mr. Aiken:

Re: Case No. 23182, Yost et al. v.
Gunby, Ordinary, et al.

In your letter of January 11, 1966, you ask whether I know of any case which this court dismissed prior to the dismissal of the above stated case, on the ground that the appellant failed to file his enumeration of errors within 15 days from the docketing of the case in this court but in which the appellant did file his enumeration of errors within the time extended by the Court within which to file his brief.

I know of no such prior case. So far as I know your case (No. 23182) was the first case in which this point arose under the new Procedure Act.

Sincerely yours,

s/s HENRY H. COBB

HHC/fc

HENRY H. COBB, Clerk.

APPELLANTS' EXHIBIT G